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14 IN THE UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 UNITED STATES OF AMERICA,

No. CR 17 00533 EMC

18 Plaintiff,

NOTICE OF JOINT GROUP ONE
DEFENSE OBJECTION TO THE
INTRODUCTION OF SEVEN
STATEMENTS

19 v.

20 RUSSELL TAYLOR OTT,

21 Defendant.

22 _____ / Dept: The Honorable Edward M. Chen
23 _____ / United States District Judge

24 TO: THE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF
25 CALIFORNIA; ASSISTANT UNITED STATES ATTORNEYS KEVIN BARRY,
AJAY KRISHNAMURTHY AND LINA PENG; AND TO THE CLERK OF THE
26 ABOVE-ENTITLED COURT:

27

28

NOTICE OF JOIN GROUP ONE OBJECTION TO SEVEN STATEMENTS

1 Yesterday afternoon the government provided notice of seven co-conspirator
 2 statements/statements by party opponent from an electronic extraction to be “used” with Sergeant
 3 Harm. The government provided a chart for the seven statements, GX 853 (statements).pdf, which
 4 is attached hereto as exhibit A. GX 853 from the government’s exhibit list is described as a Will
 5 Fonteno phone extraction. The government noted that the statements were on the previously on
 6 the co-conspirator statement chart, but on the attached chart they are under a different numbering
 7 system. The defense objects to the admission of all of the statements. The Court has already
 8 sustained objections to six of the statements (four of which the government stated they were no
 9 longer seeking to introduce under FRE 801(d)(2)(E)), and the defense objects to the seventh
 10 statement because it does not in fact appear on the co-conspirator chart. The notice is untimely
 11 and there is an objection on FRE 403 grounds.

12 On the Exhibit A chart the seven statements are numbered 209, 247, 244, 361, 360, 798,
 13 799. The numbered statements correspond to different numbers on the co-conspirator chart as set
 14 out in the below table, and statement 799 does not appear on the co-conspirator chart.

EXHIBIT A	CO-CONSPIRATOR CHART
209	Statement 217
247	Statement 235
244	Statement 234
361	Statement 245
360	Statement 246
798	Statement 312
799	

22 Per its Order re Co-Conspirator Statements (ECF 2514), the Court has already sustained
 23 objections to the six statements that appear on the co-conspirator chart. For four of these
 24 statements (217, 361, 360, 312), the government stated that it was no longer seeking to admit the
 25 statement under FRE 801(d)(2)(E). The seventh statement, attributed to Jon Nelson is in a group
 26 text message on February 21, 2015. The statement reads:
 27
 28

1 My brothers I'm so proud to be a Sonoma co hells angel you know when you are on
2 your bike and you get to think a lot. We just rode as a team through a lot of places
3 were (sic) there are more people that hate us than love us. All so we could pay respect
4 to a brother who was killed. Not only a brother but one of our brothers (sic) son also.
5 Then on the way to here to find out about big mike from tucson (sic)

6 For unexplained reasons the government is now trying to admit statements that the Court has
7 already ruled should stay out. As to the seventh statement, the notice of the statement is late, the
8 exact context of the statement in a group text is not clear, and the statement is of little probative
9 value, vastly outweighed by its potential prejudice.

10

11 Dated: May 22, 2022

12 Respectfully submitted,
13 /s/

14 ROBERT F. WAGGENER
15 MARCIA M. MORRISSEY
16 JOHN T. PHILIPS BORN
17 K. ALEXANDRA McCLURE
18 JAI M. GOHEL
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29 By: */s/ Robert F. Waggener*
30 ROBERT F. WAGGENER
31 On Behalf of Group One Defense